

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

KEVIN C. BRAITHWAITE,)	
)	Case No. 007-006
Plaintiff,)	JURY TRIAL DEMANDED
v.)	
)	
CORRECTIONAL MEDICAL SERVICES,)	
SCOTT S. ALTMAN, and)	
CATHY KIONKE)	
)	
Defendants.)	

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO RE-OPEN CASE**

Correctional Medical Services, Inc. ("CMS"), Scott Altman and Cathy Kionke (collectively "Defendants") by and through their undersigned counsel of record, hereby respond to Plaintiff's Motion to Re-Open the Case (D.I. 45) and state as follows:

1. Plaintiff initiated the above-captioned action by filing his Complaint January 5, 2007. (D.I.2) In addition to the above-named Defendants, Plaintiff also named Gail Eller, but claims against Ms. Eller were dismissed by the Court on May 4, 2007. (D.I. 10)
2. On August 10, 2007, Defendants filed their Motion to Dismiss. (D.I. 23) Plaintiff responded in opposition on August 16, 2007. (D.I. 24) Also on that date, Plaintiff filed his Motion for Injunctive Relief. (D.I. 28) Defendants responded thereto on January 9, 2008, addressing all of Plaintiff's allegations. (D.I. 33) On February 11, 2008, the Court denied the Plaintiff's Motion for Injunctive Relief and granted Defendants' Motion to Dismiss. (D.I. 36)
3. On June 17, 2008, Plaintiff filed his Notice of Appeal of the Court's February 11 Order of dismissal to the Third Circuit. (D.I. 42) On July 9, Plaintiff filed his Notice of Withdrawal of

the Third Circuit appeal. (D.I. 44) On July 11, Plaintiff filed the instant Motion in this Court seeking to re-open the case. (D.I. 45)

4. Federal Rule of Civil Procedure 59(3) provides: “Any motion to alter or amend a judgment shall be filed no later than 10 days after the entry of the judgment.” District of Delaware Local Rule 7.1.5 provides: “. . . If a party chooses to file a motion for reargument, said motion shall be filed within 10 days after the Court issues its opinion or decision. . . .” After the Court dismissed the case on February 11, 2008, Plaintiff took no action until June 17, when he filed Notice of his appeal to the Third Circuit. After withdrawing that Appeal, Plaintiff then filed the instant Motion 151 days after the entry of the Court’s February 11 order of dismissal. Plaintiff offers no explanation or justification as to why it took him nearly six months to file what should have been filed within 10 days. Because the instant Motion is not timely it should be denied.

BALICK & BALICK, LLC

/s/ James E. Drnec
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711 King Street
Wilmington, Delaware 19801
302.658.4265
Attorneys for Defendants

Date: July 15, 2008

CERTIFICATE OF SERVICE

I, James Drnec, hereby certify that on the 15th day of July 2008, the foregoing Defendants' Opposition to Plaintiff's Motion to Re-Open Case was filed via CM/ECF and served First Class Mail upon the following:

Kevin C. Brathwaite
SBI 315294
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ James E. Drnec
James E. Drnec, Esquire (#3789)